construed to mean a formal demand made in accordance with the strict rules of the common law but that the word "demand" should be construed in its popular sense. I am accordingly of the opinion that the letter of the 5th October 1956 was a sufficient notice of demand in writing as required by section 15(1)(a) of the Ordinance.

I will now deal with the second submission that on the evidence it was not reasonable for the learned trial Judge to make an order for possession against the appellant. In the first place the question of what is reasonable is eminently a question of fact for the trial Judge and in an appeal to this Court on the question of reasonableness, unless the appellant can show that the trial Judge has misdirected himself, where evidence of reasonableness has been led, by omitting some point of substance or by taking into account something which should not be taken account of, an appellate Court will not disturb the trial Judge's decision. Here, however, the only evidence of reasonableness led was irregularity in payment of rent.

In my opinion where the only evidence of reasonableness is irregularity in the payment of rent it is material for the trial Judge to consider all the circumstances relating thereto and if he fails to direct his mind to such circumstances, if any exists, he has misdirected himself.

In this case the learned trial Judge said: "The correspondence in Exhibit A disclosed that defendant had been most irregular in the payment of rent for some considerable time." I am satisfied that he based his finding on the question of reasonableness purely on the fact of irregularity in the payment of rent and that he had failed to direct his mind to the facts (as disclosed in the correspondence) that led to such irregularity. I am also satisfied that if the learned trial Judge had properly directed himself he might have come to a different conclusion and in the result the appeal must be allowed.

I direct a new trial. The costs of this appeal and of the Court below will be paid by the respondent on the same scale as that allowed by the Court below.

New trial ordered.

Solicitors: *Lee & Lee; L. Rayner.*

PUBLIC PROSECUTOR v. ISMAIL BIN LOYOK

[A. Cr. J. (Smith J.) March 26, 1958]

[Seremban — Criminal Appeal No. 1 of 1958]

Penal Code, s.409 — Criminal breach of trust — Sentence — Inadequacy — Consideration of public interest.

In this case the accused was convicted of the offence of criminal breach of trust as a public servant, an offence under section 409 of the Penal Code and was bound over under section 294(i) of the Criminal Procedure Code (Cap.6).

Held: the sentence was inadequate and must be altered to one of six months' imprisonment.

The first and foremost consideration of punishment is the public interest. The object of punishing crime is not only to punish the offender but also to deter others. Although it is desirable that the first offender should if possible be kept from coming into contact with hardened criminals, nevertheless other public servants submitted to temptation will not be deterred from succumbing to temptation if they see that the only punishment which it involves is some form of binding-over.

Case referred to:—

(1) *R. v. Ball,* 35 Cr. App. R. 164.

MAGISTRATE'S APPEAL.

L. A. Massie (Federal Counsel) for the appellant.

K. C. Hoh for the respondent.

Smith J.: — This was an appeal by the Public Prosecutor against the inadequacy of sentence.

The accused was convicted of the offence of criminal breach of trust as a public servant, an offence under section 409 of the Penal Code. The accused was a clerk in the Seremban office of the Telecoms. Department of the Federal Government since 1946. As acting supervisor it was his duty to receive monies from the public over the counter in respect of telephone accounts and to issue receipts therefor in accordance with the General Orders governing it. It was also his duty to pay all monies received into the Telecoms. account at the Chartered Bank, Seremban. A surprise check held on 13th August, 1957, revealed that the accused was $958.69 short. The accused's basic salary was $394 per mensem.

The accused was convicted by the learned President and against that conviction he has not appealed.

The learned President dealt with the accused under section 294(i) of the Criminal Procedure Code and directed that he be released on his entering into a bond in the sum of $300 with 2

sureties to appear and receive judgment if and when called upon any time during the next year. The learned President also ordered him to make restitution of the sum of $958.69 mentioned in the charge. This he has done.

From the learned President's reasons for imposing this sentence he appears to have taken a relatively lenient view because although the accused was doing the work of a supervisor he was in fact no more than a timescale clerk, and the supervision of the Department by senior officers being extremely lax the accused succumbed to the temptation placed before him. In the words of the learned President "The accused was a first offender who, as a result of a weakness in his character, has betrayed the trust which had been reposed in him. In the circumstances I think he should be given another chance to behave".

In my opinion the learned President has in this case not given sufficient consideration to the public interest. The principles upon which the Courts in this country act are those set out in *R. v. Ball*[1]. The first and foremost consideration of punishment is the public interest. The object of punishing crime is not only to punish the offender but also to deter others. Although it is desirable that the first offender should if possible be kept from coming into contact with hardened criminals, nevertheless other public servants submitted to temptations will not be deterred from succumbing to temptation if they see that the only punishment which it involves is some form of binding-over. Until it is understood by all public servants in this country that the normal punishment for helping themselves to public money is to be sent to prison they will continue to be weak-willed persons prepared to pilfer the till.

Much as I dislike sending to prison a person who has succeeded in placing himself in new employment, nevertheless I thought it necessary in this case that I should impose a sentence of imprisonment in order that others may be deterred. I have taken into consideration the fact that the accused has made restitution, that it was his first offence, and that the sentence is being imposed some months after the close of his trial. In these circumstances I only sentenced him to 6 months' imprisonment. The appeal was allowed and the order of the learned President varied as above.

Appeal allowed.

Solicitors: *Eugene Lye & Hoh.*

Re D. C. HENRY

[Cr. R. J. (Rigby J.) March 3, 1958]

[Penang — Criminal Revision No. 1 of 1958]

Penal Code, s.420 — Cheating — Obtaining goods on credit by issue of post-dated cheques — Sentence — Criminal Procedure Code (Cap.21), s.183(2)

In this case the accused was convicted of two charges of cheating. It was alleged by the prosecution that the accused obtained goods from a shopkeeper and gave post-dated cheques in payment which were subsequently dishonoured. The learned Magistrate found that the accused must have known that he would not have funds in the Bank to meet the cheques when they were due for presentation. He therefore convicted the accused and sentenced him to six months' imprisonment on each charge, such sentence to run concurrently. The accused had no previous record.

Held: the sentence imposed was excessive and in the circumstances of the case the accused should be unconditionally discharged under section 183(2) of the Criminal Procedure Code.

CRIMINAL REVISION IN CHAMBERS.

Rigby J.: — The accused in this case was convicted on two charges preferred against him of cheating, contrary to the provisions of section 420 of the Penal Code. He was sentenced to six months' imprisonment on each charge, such sentences to run concurrently.

The particulars of those two charges were that on the 10th and 13th April, 1957, the accused cheated a shopkeeper by dishonestly inducing him to deliver to him sundry goods to the total value of $50 and $70 respectively.

The brief facts of the case were that on the 10th April, 1957, the accused, already a customer at the shop and known to the shopkeeper for about a year previously, went into the shop, ordered sundry goods and said that he wanted them on credit. The shop-keeper declined to give him credit, whereupon the accused gave him a postdated cheque for $50. According to the complainant shop-keeper the accused, at the time of giving him the cheque, said that he would have money in the Bank on the 15th April and the cheque could be cashed on that day.

On the 13th April the accused again came to the shop, purchased $70 worth of goods and gave the complainant a postdated cheque for that amount dated the 18th April, 1957. It is worthy of note that on this occasion the complainant did not demur to supplying goods on credit and apparently was perfectly willing to accept the